

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SHAWNTAY LAKEITH SWANN,)	
)	
Petitioner,)	
)	1:18CV527
v.)	1:06CR443-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On June 20, 2018, Petitioner filed a Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255. (Doc. 95.) The Order and Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on June 21, 2018, was served on the parties in this action. (Doc. 96.) Because the motion was second or successive, the Magistrate Judge recommended that the action be filed and dismissed *sua sponte* for failure to obtain certification for the § 2255 application by filing a motion for authorization in the Court of Appeals for the Fourth Circuit. (*Id.*) Petitioner then filed a response to the Recommendation, which states, in its entirety, "I, Shawntay L. Swann, would like to withdraw this motion and I will file this motion in the United States Court of Appeals[s] [for] the Fourth Circuit following your order." (Doc. 98.) Soon thereafter, however, Petitioner filed a motion to withdraw his response (Doc. 100), which the court will grant.

Petitioner also filed objections to the Recommendation of the Magistrate Judge. (Doc. 99.)

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a *de novo* determination, which is in accord with the Magistrate Judge's Recommendation. The court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Petitioner's motion to withdraw (Doc. 100) is GRANTED and that Petitioner's Response (Doc. 98) is deemed withdrawn.

IT IS FURTHER ORDERED that this action be filed and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a motion for authorization in the Court of Appeals for the Fourth Circuit, as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

A judgment dismissing this action will be entered contemporaneously with this Order.

Finding neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability is not issued.

/s/ Thomas D. Schroeder
United States District Judge

August 17, 2018